

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHN DOE, A/K/A ROY ANTHONY
BROWN,

Plaintiff,

VS.

BROOKS COUNTY DETENTION
CENTER, *et al*,

Defendant.

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CIVIL ACTION NO. C-04-329

**MEMORANDUM OPINION AND ORDER DENYING MOTIONS FOR ENTRY OF
ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

Pending are defendants' motions for entry of an order granting motion for summary judgment (D.E. 126 and 129) based upon the failure of plaintiff to file a response to the motions. Although dismissal for want of prosecution pursuant to Fed. R. Civ. P. 41(b) might be an appropriate sanction for failure to file a response to a motion for summary judgment, *Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997), entry of summary judgment on the merits is not. *See discussion, Johnson v. Pettiford*, 442 F.3d 917 (5th Cir. 2006). The motions (D.E. 126, 129) are denied. The summary judgment motions are taken under advisement, and the undersigned may *sua sponte* consider dismissal under Fed. R. Civ. P. 41(b).

ORDERED this 16th day of May, 2006.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE